

REMARKS

The Examiner is requested to consider the following remarks related to new claims 7-11 that correspond to cancelled claims 1-6.

Claim 2 (corresponding to new claim 7) was rejected under 35 U.S.C. § 102(b) as being anticipated by WO 95/06690 ('670). The Office Action asserts that this reference discloses a film containing a polymer blend comprising vinyl acetate or vinyl alcohol, ethylene glycol and antifungals. The antifungals referred to by the Examiner are disclosed in the reference on page 6, line 30 through page 7, line 5. However, the reference is quite clear that the antifungal is a "biological active substance having curative or therapeutic value for human beings or non-human beings." In other words, the broad recitation of an antifungal need not relate to the claimed antifungal agent activated by the presence of moisture. As a matter of fact, therapeutic antifungals are typically organic compounds that exhibit curative or therapeutic value upon contact with skin, and they do not rely upon the reference of moisture. New claim 7 also identifies the principal components of the polymer blend that have different water transmission rates to control the rate of sulfur dioxide release. These components are not disclosed in the cited prior art. Accordingly, it is applicant's position that claim 2 is not anticipated by WO '670.

Anticipation requires the disclosure, in a prior art reference, of each and every limitation as set forth in the claims. *Titanium Metals Corp. v. Banner*, 227 USPQ 773 (Fed. Cir. 1985); *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 USPQ2d 1081 (Fed. Cir. 1986); *Akzo N.V. v. U.S. International Trade Commissioner*, 1 USPQ2d 1241 (Fed. Cir. 1986). There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. § 102. *Scripps Clinic and Research Foundation v. Genetech, Inc.*, 18 USPQ2d 1001 (Fed. Cir. 1991); *Studiengesellschaft Kohle GmbH v. Dart Industries*, 220 USPQ 841 (Fed. Cir. 1984).

Claims 2-6 (corresponding to new claims 7-11) were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO '670 in view of FR 2467795 ('795).

In this rejection, the Examiner's primary reliance is upon WO '670. With respect to new claims 8 and 11 (dependent upon claim 2) the prior arguments relating to WO '670 are incorporated herein by reference. The secondary reference FR '795 does disclose the utilization of a metabisulphite but that antifungal agent is not disclosed as being dispersed in the blend of polymers. The Abstract of the French document indicates that the antifungal agent impregnates a support (tray 1) which is quite different from the claimed antifungal agent being dispersed through the polymer blend.

With respect to claims 4 and 5 (corresponding to new claims 9 and 10), the claimed film is indicated as including a major portion by weight of an EVA copolymer and a minor portion by weight of a low density polyethylene material. The antifungal agent is specified as being in the range of 10-30% of sodium metabisulfite.

The characterization in the Office Action of WO '670 is not correct. The document does not disclose a blend of such materials which may be vinyl acetate and ethylene glycol and antifungals. Rather, the reference discloses a blend of polyurethane and a poly alkaline oxide for use as a lubricant coating. The vinyl acetate and ethylene glycol cannot be a component of the primary polymer blend but, as mentioned on page 2, lines 25 and 26, the additional materials mentioned by the reference are strictly optional additional components, not alternatives to the basic polymer blend of polyurethane and a poly alkaline oxide. Accordingly, the Office Action does not disclose the composition of the claimed invention.

The Office Action mentions that the water transmission rates relate to an inherent property of a polymer film. Although this is true, there is no disclosure of the difference in water transmission rates of a polymer in a blend being used to control the activation of a water vapor activated fungicide.

In constructing the rejection under 35 U.S.C. § 103, the Office Action ignores the fact that the present invention is for a packaging film which is a self supporting interger distinct from a coating that needs a support. Preferably, the film is formed into a bag to hold grapes and to prevent fungal infestational of the grapes. The '795 patent discloses an

antifungal composition that is held in a gas permeable polymer bag, or impregnated into the tray material. There is no disclosure of incorporating the antifungal agent in a polymeric packaging film, let alone a packaging film.

Therefore, the combination of references fails to present a *prima facie* case of obviousness.

In *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984), the Court mandated:

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined *only* if there is some suggestion or incentive to do so. (Emphasis in the original).

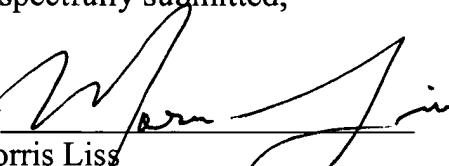
In view of the above, consideration and allowance are, therefore, respectfully solicited.

In the event the Examiner believes an interview might serve to advance the prosecution of this application in any way, the undersigned attorney is available at the telephone number noted below.

The Director is hereby authorized to charge any fees, or credit any overpayment, associated with this communication, including any extension fees, to CBLH Deposit Account No. 22-0185.

Date: July 10, 2003

Respectfully submitted,

By 
Morris Liss

Registration No.: 24,510
CONNOLLY BOVE LODGE & HUTZ LLP
1990 M Street, N.W., Suite 800
Washington, DC 20036-3425
(202) 331-7111
(202) 293-6229 (Fax)
Attorney for Applicant